

The Flinn Report

Illinois

Regulation

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Joint Committee on Administrative Rules

217/785-2254

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Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

☞ DEMONSTRATIONS & EXHIBITS ON STATE PROPERTY

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted amendments for "Acquisition, Management and Disposal of Real Property" (44 Ill Adm Code 5000; 29 Ill Reg 18977), effective 8/10/06, to replace and expand upon an earlier emergency rulemaking that became effective 11/17/04 and expired on 4/15/05. The rulemaking strikes the prohibition against placing an exhibit (a stationary display of material including, but not limited to, art work, books, photographs, charts, graphs, historical displays, or promotional items presented for informational purposes) in specified State buildings if the exhibit promotes religious philosophies or political candidates or philosophies. An amendment to the definition of "demonstration" prohibits conduct that is obscene, indecent, violent, or otherwise punishable by law. Also, demonstrations are prohibited inside State buildings, and no state agency or State employee may sponsor a demonstration or make a request for one on behalf of any organization or individual. "Special events" will no longer be limited to events that take place after normal business hours, and "pub-

lic business hours" at the Thompson Center do not include Saturdays, Sundays, or holidays. Written permission is required before distributing leaflets to persons entering a State building, and they may be distributed within a State building only as part of an exhibit. An appendix that details rental fees for the Thompson Center (JRTC) is updated, also. Changes since 1st Notice amend the definition of "grounds" for the specified State buildings to include the atrium and concourse of the JRTC and clarify that leaflet distribution is not allowed in any auto parking area under DCMS control or in any business areas within the State buildings. Added text also states that no demonstration permit will be denied on the basis of the viewpoint of the group seeking a permit or the content of the demonstration. Those affected by this rulemaking include any organization desiring to utilize a DCMS-managed State building or grounds in Peoria, Springfield, Champaign, Des Plaines, Marion, East St. Louis, Rockford, Elgin, and Chicago for various purposes.

Questions/requests for copies: Gina Wilson, DCMS, 720 Stratton Bldg., Springfield IL 62706, 217/785-1793.

(cont'd next page)

Proposed Regulations

☞ CDB PROCUREMENT

CAPITAL DEVELOPMENT BOARD proposed two new Parts titled "Prequalification of Construction Managers" (44 Ill Adm Code 990; 30 Ill Reg 13952) and "Selection of Construction Managers" (44 Ill Adm Code 1025; 30 Ill Reg 1025) to implement a recent public act amending the Illinois Procurement Code to regulate construction manager (CM) services. Part 990 concerns selection of responsible construction managers for potential CDB projects. Application procedures are prescribed, with CDB maintaining the confidentiality of information submitted to the agency. Potential firms must update their status concerning such topics as change in business structure or address, terminated contracts, financial difficulties, etc. Full disclosure must be provided in accordance with the ethics and conflict of interest disclosure article of the Procurement Code. Evaluation criteria that CDB will employ are listed, but not given a value. Suspension and debarment protocols are stated, including 17 possible events that may imperil previously granted prequalification status (e.g., failure to timely submit required documents, comply with CDB directives). More narrowly restricted events may warrant interim or immediate suspension (e.g., threat to the public interest or safety, criminal charges being filed). CDB procedures in the event of adverse CDB prequalification actions are detailed.

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NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

PUBLICLY-OWNED AIRPORTS

The DEPARTMENT OF TRANSPORTATION repealed the following 13 Parts, all effective 8/10/06: of "Benton Municipal Airport Hazard Zoning Regulations" (92 Ill Adm Code 20), "Cairo Airport Hazard Zoning Regulations" (92 Ill Adm Code 25), "Coles County Memorial Airport Hazard Zoning Regulations" (92 Ill Adm Code 32), "Decatur Airport Hazard Zoning Regulations" (92 Ill Adm Code 34), "DeKalb Municipal Airport Hazard Zoning Regulations" (92 Ill Adm Code 36), "DuPage Airport Hazard Zoning" (92 Ill Adm Code 37), "Edgar County Airport Hazard Zoning Regulations" (92 Ill Adm Code 38), "Ingersoll Municipal Airport Hazard Zoning" (92 Ill Adm Code 50), "Jacksonville Municipal Airport Hazard Zoning Regulations" (92 Ill Adm Code 52), "Kewanee Municipal Airport Hazard Zoning Regulations" (92 Ill Adm Code 54), "Lewis University Airport Hazard Zoning" (92 Ill Adm Code 57), "Williamson County Airport Hazard Zoning Regulations" (92 Ill Adm Code 94), and "Illinois Valley Regional Airport Hazard Zoning" (92 Ill Adm Code 95). DOT also adopted the consolidation of these airports into Appendix A of the Department's general rules titled "Airport Hazard Zoning" (92 Ill Adm Code 16), effective 8/10/06, because these general Part 16 rules apply to all publicly-owned airports; address the administration and enforcement of structure, equipment, and vegetation height restrictions; and regulate the use of property at or in the vicinity of publicly-owned airports. Appendix A of 92 Ill. Adm. Code 16 specifies each airport's three-letter or number designation, city and county location of the airport, latitudi-

nal and longitudinal coordinates of the airport, whether federal or State standards apply to that airport, and the date (9/15/06) these rules become effective for the airports listed. (The airports in Springfield, Moline, Sterling-Rock Falls, and Salem are already covered by Part 16.) DOT includes all airports under this one general rulemaking instead of duplicating separate rules for each airport in the Parts that are repealed. Those affected by these rulemakings include businesses, not-for-profit corporations, and municipalities located in the vicinity of the listed airports, future land and real estate developments near the airports, and owners of any farms, grain elevators, power companies, or cell phone and television towers that desire to alter or build such facilities in specified areas near these airports.

Questions/requests for copies: Robert Hahn, DOT, 1 Langhorne Bond Dr., Abraham Lincoln Capital Airport, Spfld. IL 62707-8415, 217/524-1580.

PROPERTY TAX HEARINGS

PROPERTY TAX APPEAL BOARD adopted amendments to "The Practice and Procedure for Appeals Before the Property Tax Appeal Board" (86 Ill Adm Code 1910), effective 8/11/06. The amendments allow the Board to close hearings or parts of hearings to the public in some instances. Any party to an appeal before the Board may adopt the evidence of any other party in the appeal, but it may not then present a case-in-chief. Subsequent filings of evidence, motions, and requests for continuances are prohibited. However, the right to present

rebuttal evidence and cross-examine witnesses is preserved. Such parties also are precluded from withholding authorization for settlement of an appeal if the party from whom evidence was adopted reaches an agreement in the pending appeal. A change since 1st Notice clarifies that a hearing or part of a hearing may be closed by the Board or its designated hearing officer to protect any confidential, proprietary, or trade secret data, information, or studies that are discussed by a witness. Small businesses that own taxable real property in Illinois and that have appeals before PTAB may be affected.

Questions/requests for copies: James Chipman, PTAB, 402 Stratton Bldg., Springfield IL 62706, 217/782-6076, e-mail: james.chipman@illinois.gov

PUBLICATION ERROR

The JOINT COMMITTEE ON ADMINISTRATIVE RULES announced 2 publication errors that occurred in 2 Illinois Student Assistance Commission rulemakings in the 8/11/06 issue of the *Illinois Register*. One error concerns the inconsistent labeling of Part 2734 on the rulemaking's notice page. The second error concerns new Part 2759, which was mistakenly labeled Part number 2766 on the notice page and in the rule text. The full text of the new Part titled "Nurse Educator Scholarship Program" (23 Ill Adm Code 2759) is reprinted in this week's *Illinois Register*. JCAR regrets any confusion these errors may have caused.

Questions/requests for copies: JCAR, 700 Stratton Office Bldg., Springfield IL 62706, 217/785-2254.

Proposed Regulations

Part 1025 concerns source selection methods employed by CDB for construction manager services. The Board will select a CM for a project from among 3 prequalified CMs submitted by a selection committee within CDB. Factors that may be considered by

the committee include: the CM's qualifications, training and experience of the CM's personnel, prior performance by the CM on CDB projects, proximity of the project to the CM's place of business, and references. For CM project fees estimated to exceed

\$300,000, interviews must be conducted by the selection committee, and CDB may appoint staff to perform a preliminary screening of potential CM candidates to provide a preliminary ranking for the committee's consideration. Notice of a request for

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proposals for a CM will be posted in the CDB Procurement Bulletin in accordance with Procurement Code time frames. CMs are not allowed to bid on or be awarded a construction contract for which pre-construction CM services have been provided but may do so if the original CM contract authorized "basic services" to be provided. Both rulemakings will affect small construction management firms seeking construction projects from CDB.

Questions/requests for copies/comments concerning the 2 rulemakings above until 10/10/06: Fred Hahn, CDB, 401 S. Spring St., 3rd Fl., Springfield IL 62706, 217/782-0700.

STATE PARKS & PROPERTIES

DEPARTMENT OF NATURAL RESOURCES proposed amendments to "Public Use of State Parks and Other Properties of the Department of Natural Resources" (17 Ill Adm 110; 30 Ill Reg 14087) to prohibit firewood acquired from any geographical area where wood exportation has been prohibited by State or federal quarantine from being brought to or possessed on DNR property. The rulemaking also prohibits the sale or distribution of any firewood on DNR land without a prior written DNR agreement. DNR states that this regulation is aimed at restricting infestations of the emerald ash borer. An additional amendment allowing dogs used on DNR land for tracking wounded deer to be on leashes up to 50' (currently 10') in length coincides with language contained in statute and another DNR Part related to general hunting on DNR land.

Questions/requests for copies/comments until 10/10/06: Jack Price, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

VOCATIONAL REHABILITATION

The DEPARTMENT OF HUMAN SERVICES proposed amendments to 2 of its Parts titled "Services" (89 Ill Adm

Code 590; 30 Ill Reg 14052) and "Customer Financial Participation" (89 Ill Adm Code 562; 30 Ill. Reg. 14044). The rulemakings change all references from DHS-ORS (Office of Rehabilitation Services) to DHS-DRS (Division of Rehabilitation Services) and refer to individuals served by DHS as customers (formerly clients). The primary rulemaking, which amends Part 590, clarifies regulations pertaining to customer degree training, non-degree training, graduate school training, and choice of training facilities and institutions. Amendments establish what types of training are available to customers (vocational, technical or academic) and specify the evidence required to support the training choice, as well as requirements for non-degree training programs. While DHS-DRS may contribute toward a customer's graduate school training, the customer is required to contribute 10% of his or her tuition and fees in addition to any financial participation based upon the customer's financial analysis. The rulemaking also establishes guidelines for customers choosing a training facility/institution to complete their individualized plan for employment (IPE) and addresses policies regarding the customer's grades, attendance, and course completion. The rulemaking also clarifies regulations for customers who choose the self-employment program, including requiring self-employment customers to provide evidence of available cash or credit to cover 50% of eligible costs and limiting the DHS-DRS contribution toward a self-employment program to \$10,000 unless approved by a DHS bureau chief. Also, DHS-DRS will not pay for transportation costs when a customer is in residence at a college or training program. In Part 562, customer financial participation guidelines are amended to include a definition for proof of income. Also, DHS services will not cover "unusual allowable expenses" (e.g., ongoing medical treatment, medication, adaptive equipment) unless the expenses are accompanied by documentation of each expense, and proof of income must be provided to and

retained by DHS when calculating a customer's financial analysis. A DHS-DRS customer participating in graduate school training will be responsible for any graduate training fee in addition to the determined customer financial participation amount. The rulemaking exempts evaluation, vocational, and academic fees from customer financial participation for customers in the hearing-impaired, pre-vocational program at Northern Illinois University. However, increased costs will apply to these participants. (Increased costs are expenses such as food, shelter, and clothing that are in excess of a customer's normal living expenses and that are necessitated by the customer's participation in an assessment for determining eligibility and vocational rehabilitation services under an IPE.) Vocational rehabilitation service providers may be impacted by these rulemakings.

Questions/requests for copies/comments concerning these 2 rulemakings until 10/10/06: Tracie Drew, DHS, 100 S. Grand Ave. E., 3rd Fl., Springfield IL 62762, 217/785-9772.

MEDICAL ALTERNATE PAYEES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to "Medical Payment" (89 Ill Adm Code 140; 30 Ill Reg 14007) and "Practice in Administrative Hearings" (89 Adm Code 104; 30 Ill Reg 13981). The Part 140 amendments formalize the DHFS relationship with alternate payees (entities registered with DHFS who serve as alternate payees for medical providers). The regulations require alternate payees to register with DHFS; permit denial or cancellation of registration; permit participation revocation or prohibition after hearing if in violation of State, federal, or DHFS regulations; and state that alternate payees are jointly or severally liable with vendors for overpayments. The amendments also list the following registration standards for those seeking to be alternate payees: be properly licensed; be certified to participate in Medicare/

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Medicaid when required; be a hospital or hospital affiliate, professional school, group practice, or a partnership that requires partners' fees to be turned over to it and whose owners are eligible to participate in the medical assistance program; be a governmental entity that requires, as a condition of employment, that fees be turned over to it; or be a community mental health agency, Federally Qualified Health Center, Rural Health Cen-

ter, or Encounter Rate Clinic enrolled as a provider; and be properly registered with DHFS and provide required disclosure. Registration shall be conditional and, if cancelled or denied, will not be subject to an administrative hearing. Amendments to Part 104 extend provisions that currently apply to medical vendor hearings to alternate payees in actions to revoke or prohibit participation in the medical assistance program and to recover

money from the alternate payee. Any entity described above seeking to participate as an alternate payee may be affected by these rulemakings.

Questions/requests for copies/comments concerning the 2 rulemakings above until 10/10/06: Tamara Tanzillo Hoffman, DHFS, 201 S. Grand Ave. E., 3rd Fl., Springfield IL 62763-0002, 217/557-7157.

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's September 12, 2006 meeting in Chicago.

PROPERTY TAX APPEAL BOARD

"Practice and Procedure for Appeals Before the Property Tax Appeal Board" proposed 6/16/06 (30 Ill Reg 10599)

ILLINOIS COMMERCE COMMISSION

"Telephone Assistance Programs" (83 Ill Adm Code 757) proposed 5/12/06 (30 Ill Reg 8714)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

"Covering All Kids Health Insurance Program" (89 Ill Adm Code 123) proposed 6/2/06 (30 Ill Reg 9983)

"Special Eligibility Groups" (89 Ill Adm Code 118) proposed 6/2/06 (30 Ill Reg 9981)